

ITEM 2

**Town of Kittery
Planning Board Meeting
January 12, 2023**

ITEM 2 - 21 Happy Avenue and 12 Roseberry Lane Right-of-Way (ROW) Review

Action: Approve, approve with conditions or deny. Owners and applicants, William and Cathy Cullen and Caroline Hall request consideration of a right-of-way plan for a 4.78 acre +/- acre parcel (Tax Map 11, Lot 29) proposing a ROW located on Happy Avenue (Tax Map 11 Lot 29-5) in the Residential Suburban Zone (R-S). Agent is Nathan Amsden, PLS., Amsden Field Survey.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
Yes	Sketch Plan Review Completeness / Approval	Last Meeting November 17, 2022	Held Application Accepted
No	Site Visit	November 28, 2022 9:00AM	Held
No	Public Hearing	December 8, 2022 6:00PM	Held
Yes	Final Plan Approval	January 12 th , 2023 6:00PM	Pending

Prior to the signing of the approved Plan any Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and, when applicable, recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4" HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS. Per Section 16.4.4.13 - Grading/Construction Final Plan Required. - Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan has been duly recorded in the York County registry of deeds, when applicable.

Background:

The existing 4.78-acre parcel contains two single family homes permitted as a condominium. An existing 12-foot travel way that begins after a bend in Happy Avenue serves 21 Happy Avenue while an easement from Roseberry Lane serves 12 Roseberry Lane. The applicants wish to divide the lot they share into two lots with a residence on each. Additional land north of the proposed boundary for Lot A on both sides of the pond up to Martin Road will be deeded to Southern Maine Fish and Game Inc. This does not require consideration by the Planning Board as a subdivision but does require ROW approval by the Board to provide frontage to both lots.

Recent Action:

The Board last heard this application on December 8th 2022 at which time the public hearing was held and closed. The Board approved the plan with the following conditions:

1. The plan must be stamped by a licensed surveyor
2. The private ROW to be deeded to the property known as 21 Happy Ave may not be expanded or improved except for reasons of maintenance and repair.
3. All culverts must remain functional and kept clear of debris.
4. Snow must be deposited in the snow storage areas as shown on the plan and sand or salt must not enter the wetlands or any abutting properties at any time.
5. No additional development may use this private ROW for access.

Conditions 2-5 will become notes on the final plan that will be signed by the Chair or Vice-chair.

ITEM 1

36 **KITTERY PLANNING BOARD**
 37 **FINDINGS OF FACT**
 38 **for**
 39 **21 Happy Ave**
 40 **Private Right-of-Way Plan**

UNAPPROVED

41
 42 Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the
 43 Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required
 44 by the Planning Board.
 45

46 **WHEREAS: Owners and applicants, William and Cathy Cullen and Caroline Hall request**
 47 **consideration of a right-of-way plan for a 4.78 acre +/- acre parcel (Tax Map 11, Lot 29) proposing**
 48 **a ROW located on Happy Avenue (Tax Map 11 Lot 29-5) in the Residential Suburban Zone (R-S).**
 49 **Agent is Nathan Amsden, PLS., Amsden Field Survey.**

50 Hereinafter the "Development".
 51

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review
 Notes dated 6/12/2018;

52

Sketch Plan Review	Held	11/17/2022
Site Visit	Held	11/28/2022
Public Hearing	Held	12/08/2022
Final Plan/ Findings of Fact	Pending	01/12/2023

53 Pursuant to the Project Application and Plan and other documents considered to be a part of the approval
 by the Planning Board in this finding consist of the following and as noted in the Plan Review Notes
 (Hereinafter the "Plan").

1. Private Road Class 1 ROW Plan, Sheet C1, by Nathan Amsden, dated January 12, 2023.

54 **NOW THEREFORE**, based on the entire record before the Planning Board as and pursuant to the applicable
 standards in the Land Use and Development Code, the Planning Board makes the following factual findings as
 required by Section **16.9.4.C.(3)(d)** and as recorded below:

FINDINGS OF FACT

Action by the board shall be based upon findings of fact which certify or waive compliance with all the
 required standards of this title, and which certify that the development satisfies the following requirements:

A. Development Conforms to Local Ordinances.

*The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the
 Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any.
 In making this determination, the municipal reviewing authority may interpret these ordinances and plans.*

Finding: The proposed right-of-way appears to conform to applicable Title 16 standards with the conditions
 of approval included herein.

ITEM 1

Conclusion: This standard appears to be met.
Vote of <u> </u> in favor <u> </u> against <u> </u> abstaining
B. Freshwater Wetlands Identified.
<i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i>
Finding: All wetlands have been identified and no impacts are proposed by this plan.
Conclusion: This standard appears to be met.
Vote of <u> </u> in favor <u> </u> against <u> </u> abstaining
C. River, Stream or Brook Identified.
<i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i>
Finding: No rivers, streams, or brooks have been identified on site.
Conclusion: This standard is not applicable.
Vote of <u> </u> in favor <u> </u> against <u> </u> abstaining
D. Water Supply Sufficient. {and}
<i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
E. Municipal Water Supply Available.
<i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
Finding: There is no additional proposed water use because both lots are already developed.
Conclusion: This standard appears to be met.
Vote of <u> </u> in favor <u> </u> against <u> </u> abstaining
F. Sewage Disposal Adequate.
<i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
Finding: Neither property uses municipal sewer as both have existing private septic.
Conclusion: This standard appears to be met.

ITEM 1

Vote of __ in favor__ against __ abstaining
G. Municipal Solid Waste Disposal Available.
<i>The proposed development will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be used.</i>
Finding: The proposed Street ROW will not increase the burden on solid waste use since both lots are already developed.
Conclusion: This standard appears to be met.
Vote of __ in favor__ against __ abstaining
H. Water Body Quality and Shoreline Protected.
<i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>
Finding: The right-of-way is not located in the shoreland overlay zone.
Conclusion: This standard is not applicable.
Vote of __ in favor__ against __ abstaining
I. Groundwater Protected.
<i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
Finding: Both lots are currently developed and no further development will occur.
Conclusion: This standard appears to be met.
Vote of __ in favor__ against __ abstaining
J. Flood Areas Identified and Development Conditioned.
<i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i>
Finding: There is no additional construction proposed.
Conclusion: This standard is not applicable.

ITEM 1

Vote of __ in favor __ against __ abstaining
K. Stormwater Managed.
<i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>
Finding: There is a condition to maintain the current functionality of the existing stormwater control measures.
Conclusion: This standard appears to be met.
Vote of __ in favor __ against __ abstaining
L. Erosion Controlled.
<i>The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.</i>
Finding: There is to be no further development or improvements made to this ROW
Conclusion: This standard appears to be met.
Vote of __ in favor __ against __ abstaining
M. Traffic Managed.
<i>The proposed development will:</i>
<ol style="list-style-type: none"> 1. <i>Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and</i> 2. <i>Provide adequate traffic circulation, both on-site and off-site.</i>
Finding: The proposed ROW will only be used as a private travel way to the address of 21 Happy Ave.
Conclusion: This standard appears to be met.
Vote of __ in favor __ against __ abstaining
N. Water and Air Pollution Minimized.
<i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i>
<ol style="list-style-type: none"> 1. <i>Elevation of the land above sea level and its relation to the floodplains;</i> 2. <i>Nature of soils and sub-soils and their ability to adequately support waste disposal;</i> 3. <i>Slope of the land and its effect on effluents;</i> 4. <i>Availability of streams for disposal of effluents;</i> 5. <i>Applicable state and local health and water resource rules and regulations; and</i> 6. <i>Safe transportation, disposal and storage of hazardous materials.</i>
<ol style="list-style-type: none"> 1. All proposed development is located outside of a Flood Hazard Area. 2. No additional development is proposed beyond the improvement of the travel way. 3 thru 6. Not applicable to the proposed development.

ITEM 1

55

<p>Finding: The proposed ROW will not result in undue water or air pollution</p>
<p>Conclusion: This standard appears to be met.</p>
<p>Vote of __ in favor__ against __ abstaining</p>
<p>O. Aesthetic, Cultural and Natural Values Protected.</p>
<p><i>The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.</i></p>
<p>Finding: The proposed ROW does not impact any significant aesthetic, cultural or natural values that require protection.</p>
<p>Conclusion: This standard appears to be met.</p>
<p>Vote of __ in favor__ against __ abstaining</p>
<p>P. Developer Financially and Technically Capable.</p>
<p><i>Developer is financially and technically capable to meet the standards of this section.</i></p>
<p>Finding: The ROW and drainage is to be maintained as is, so does not require a performance guarantee.</p>
<p>Conclusion: This standard appears to be met.</p>
<p>Vote of __ in favor__ against __ abstaining</p>
<p>S. For a Right of Way.</p>
<p><i>The proposed ROW:</i></p> <ol style="list-style-type: none"> 1. <i>Does not create any nonconforming lots or buildings; and</i> 2. <i>Could reasonably permit the right of passage for an automobile.</i>
<p>Finding: The proposed development does not create any nonconforming lots or buildings and provides adequate passage for vehicles.</p>
<p>Conclusion: This standard appears to be met.</p>
<p>Vote of __ in favor__ against __ abstaining</p>

Article III. Street Signage

16.8.3.1 Names.

Streets which join or are in alignment with streets of abutting or neighboring properties must bear the same name. Names of new streets may not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality and are subject to the approval of the Planning Board.

Finding: The applicant; Caroline Hall, has a residence that is already addressed as 21 Happy Avenue. The other applicants, Bill and Cathy Cullen, are also already addressed as 12 Roseberry Lane.

Conclusion: This requirement appears to be met

Vote of __ in favor__ against __ abstaining

ITEM 1

NOW THEREFORE the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants final approval for the Right of Way (ROW) at the above referenced property, including any waivers granted or conditions as noted.

Waivers:

- 1.) Row Width 16.8 Attachment 1.a. Standard is 40 feet, the existing ROW is 30 feet.
- 2.) Travel way Width 16.8. Attachment 1.b. Standard is 18 feet (gravel), current condition is 12 feet.
- 3.) Sidewalk 16.8 Attachment 1.c. Standard is 5 feet, no sidewalks currently exist in the area.
- 4.) Roadway Length 16.8 Attachment 1(Cul-de-Sac) b. Standard is 400 feet, existing ROW is 705 feet
- 5.) Stormwater Management 16.8.9 D (2) m. Road was built to 1999 plan and reviewed by CMA, the Town’s peer review engineers. Road must be maintained by the owners of 21 Happy Ave.

Conditions of Approval (to be included on the final plan):

- 1. The ROW must not be improved or expanded, except for purposes of maintenance and repair.
- 2. All culverts must remain functional and kept clear of debris by the owner of 21 Happy Ave.
- 3. Snow must be deposited in the snow storage areas as shown on the plan and plowed snow, sand or salt must not enter the wetlands or any abutting properties at any time.
- 4. No additional development may use this private ROW for access.

56 Notices to Applicant: (not to be included on the final plan)

- 57 1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with
- 58 review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and
- 59 abutter notification.
- 60 2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or
- 61 variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
- 62 3. One (1) paper copy of the final plan (recorded plan if applicable) and any and all related state/federal
- 63 permits or legal documents that may be required, must be submitted to the Town Planning Department.
- 64 Date of Planning Board approval shall be included on the final plan in the Signature Block.
- 65 4. This approval by the Town Planning Board constitutes an agreement between the Town and the
- 66 Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any
- 67 Conditions of Approval.

The Planning Board authorizes the Planning Board Chair, or Vice Chair, to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of __ in favor __ against __ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON _____

Dutch Dunkelberger, Planning Board Chair

Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.